

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs. No. 20-CR-1719-KG

JUAN MIGUEL ALVAREZ,

**Defendant.**

**PLEA HEARING  
VIA VIDEOCONFERENCE  
October 21, 2020**

BEFORE: HONORABLE GREGORY B. WORMUTH  
United States Magistrate Judge

**GOVERNMENT  
EXHIBIT  
1**

No. 20-CR-1719-KG  
USA v. Juan Miguel Alvarez

Plea Hearing  
October 21, 2020

1 MS. SOLIS: For a change-of-plea hearing,  
2 Court calls criminal number CR-20-1719-KG, Juan Miguel  
3 Alvarez.

4 MR. BARTLETT: Bradley Bartlett for the  
5 United States.

6 MR. BENJAMIN: Good afternoon, Your Honor.  
7 Brock Benjamin on behalf of Mr. Alvarez, ready to  
8 proceed with the plea hearing.

9 THE COURT: All right. Mr. Alvarez, will  
10 you raise your right hand? Do you promise to tell me  
11 the truth today?

12 DEFENDANT ALVAREZ: Yes, sir.

13 THE COURT: Thank you. You can put your  
14 hand down.

15 Now that you have made that promise, if you  
16 don't tell the truth, you can be charged with the crime  
17 of perjury. Do you understand that?

18 DEFENDANT ALVAREZ: Yes, Your Honor.

19 THE COURT: Please tell me your full name  
20 and date of birth.

21 DEFENDANT ALVAREZ: Juan Miguel Alvarez,  
22 August 10th, 1974.

23 THE COURT: At this time, are you under the  
24 influence of drugs, alcohol or medication?

25 DEFENDANT ALVAREZ: Medication, sir.

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1                   THE COURT: Does any of that medication  
2                   cloud your mind or make it difficult for you to  
3                   understand what's happening?

4                   DEFENDANT ALVAREZ: No, sir.

5                   THE COURT: Are you suffering from any  
6                   illness or medical problem that makes it difficult for  
7                   you to understand what's happening?

8                   DEFENDANT ALVAREZ: I am suffering from  
9                   PTSD, bipolar and depression, but I do understand.

10                  THE COURT: All right. And if at any time  
11                  during the hearing if, for any reason, you find  
12                  yourself, you know, not -- you know, understanding,  
13                  will you promise that you'll speak up about that to me?

14                  DEFENDANT ALVAREZ: Yes, Your Honor.

15                  THE COURT: All right. So as I told you  
16                  when you were standing in the group, your case is in  
17                  court today because your attorney says you want to  
18                  plead guilty.

19                  Is anyone forcing you or threatening you in any  
20                  way to make you plead guilty?

21                  DEFENDANT ALVAREZ: No, Your Honor.

22                  THE COURT: All right. Now, again, when you  
23                  were up in the group, I told you about a number of  
24                  rights that you have. And one of those was a right to  
25                  have a district judge preside over your plea hearing.

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1 Did you understand that right?

2 DEFENDANT ALVAREZ: Yes, Your Honor.

3 THE COURT: And knowing that, are you still  
4 willing to proceed in front of me today?

5 DEFENDANT ALVAREZ: Yes, Your Honor.

6 THE COURT: All right. Now, the other thing  
7 I told you about was the right to have an in-person  
8 plea hearing.

9 Now, your attorney filed a notice with the Court  
10 saying that you agree to have your hearing done  
11 remotely. Did you talk to him about that?

12 DEFENDANT ALVAREZ: Yes, Your Honor.

13 THE COURT: All right. And, you know,  
14 you've seen a little bit about how the hearing goes. I  
15 told -- you know, you got to hear when I was reading  
16 all the rights earlier, and now we've had a little bit  
17 of a chance to talk. Are you okay with proceeding in  
18 this fashion?

19 DEFENDANT ALVAREZ: Yes, Your Honor.

20 THE COURT: All right. So, Mr. Alvarez, the  
21 most important right I think I told you about was the  
22 right to plead not guilty, because if you did that,  
23 you'd get a trial in front of a jury of 12 people and a  
24 jury trial comes with a bunch of other rights that I  
25 told you about. Did you understand those rights?

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1 DEFENDANT ALVAREZ: Yes, Your Honor.

2 THE COURT: And do you understand that if  
3 you plead guilty today, there's not going to be a  
4 trial, and you're going to give up those rights?

5 DEFENDANT ALVAREZ: Yes, Your Honor.

6 THE COURT: All right. Now, the charging  
7 document with your name on it, that's -- it's called  
8 the indictment. Have you read that?

9 DEFENDANT ALVAREZ: Yes, Your Honor.

10 THE COURT: All right. So, of course, we're  
11 going to talk a little bit more about the plea hearing  
12 in a moment. But I understand that what I'm going to  
13 be asking you to plead guilty to today is -- or asking  
14 if you want to plead guilty to it today is Count 1 of  
15 the indictment. And that charges you -- Mr. Alvarez,  
16 first let me have you -- that room that you're in, are  
17 there any inmates or anyone that's in the room with  
18 you?

19 DEFENDANT ALVAREZ: No. I'm by myself, Your  
20 Honor.

21 THE COURT: All right.

22 MR. BENJAMIN: Thank you, Your Honor.

23 THE COURT: So Count 1 charges you with  
24 production of a visual depiction of a minor engaging in  
25 sexually explicit conduct. Do you understand that

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1 charge against you?

2 DEFENDANT ALVAREZ: Yes, Your Honor.

3 THE COURT: I'm going to have the prosecutor  
4 tell you two things about that crime, the maximum  
5 punishment and then the elements that make it up.

6 Counsel?

7 MR. BARTLETT: The elements include, A, the  
8 defendant employed, used, persuaded, induced, enticed  
9 or coerced the victim to take part in sexually explicit  
10 conduct for the purpose of producing a visual depiction  
11 of such conduct; B, at the time, the victim was a minor  
12 under 18 years old; and, C, the visual depiction was  
13 produced using materials that had been mailed, shipped  
14 or transported across state lines or in foreign  
15 commerce by any means, including by computer, or has  
16 actually been transported or transmitted using any  
17 means or facility of interstate or foreign commerce.

18 The maximum penalties include imprisonment for  
19 not less than 15 years and not more than 30 years, a  
20 fine not to exceed \$250,000, a mandatory term of  
21 supervised release of not less than five years and not  
22 more than life, a mandatory special penalty assessment  
23 of \$100, and restitution as may be ordered by the  
24 Court.

25 THE COURT: All right. Mr. Alvarez, those

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1 are the elements and the maximum punishments that  
2 apply. Do you understand all of that?

3 DEFENDANT ALVAREZ: Yes, Your Honor.

4 THE COURT: Now, have you talked -- had  
5 enough time to talk with your attorney about the facts  
6 and circumstances of your case?

7 DEFENDANT ALVAREZ: Yes, Your Honor.

8 THE COURT: And are you satisfied with the  
9 advice and representation you've received from him?

10 DEFENDANT ALVAREZ: Yes, Your Honor.

11 THE COURT: I understand that, with his  
12 help, you've reached a plea agreement with the  
13 government, and I've looked at a copy of it. It looks  
14 like you signed your plea agreement. Did you sign it?

15 DEFENDANT ALVAREZ: Yes, Your Honor.

16 THE COURT: And before you signed it, did  
17 you read it from the beginning to the end?

18 DEFENDANT ALVAREZ: Yes, Your Honor.

19 THE COURT: Before you signed it, did you  
20 fully discuss it with your attorney?

21 DEFENDANT ALVAREZ: Yes, we discussed it,  
22 Your Honor.

23 THE COURT: At this time, are you  
24 comfortable that you understand your plea agreement?

25 DEFENDANT ALVAREZ: Yes, Your Honor.

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1 THE COURT: I'm going to have your attorney  
2 at this time summarize it. I want you to listen,  
3 Mr. Alvarez, because I'm going to ask you at the end if  
4 what he -- how he summarizes it matches up with your  
5 understanding. Counsel?

6 MR. BENJAMIN: Thank you, Your Honor. This  
7 is a plea agreement where my client is agreeing to  
8 waive his trial rights which are on the bottom of  
9 page 1 and enter a guilty plea. The United States has  
10 explained the elements of that offense and the  
11 sentencing for that specific offense.

12 This, once again, is not a (c)(1)(C) plea  
13 agreement. However, the Court has noted the largest  
14 benefit that is applied by this is it is a plea to one  
15 out of the eight counts in the indictment.

16 The defendant is making an admission to the  
17 facts on the bottom of page 4 in bold and is also  
18 making stipulations that the defendant has clearly  
19 demonstrated acceptance of responsibility and that  
20 there is no Booker bar and the parties have the ability  
21 to argue for a sentence within that statutory range,  
22 which is different in this case, Your Honor. It's a  
23 very limited statutory range of 15 to 30 years.

24 And the defendant is agreeing to restitution.  
25 Restitution, like it is in all these [INAUDIBLE] cases,

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1 has not yet been determined at this point in time, Your  
2 Honor.

3 And the defendant is also agreeing to a  
4 forfeiture. Those devices have been seized, it is my  
5 understanding.

6 The defendant has an obligation to provide  
7 truthful, accurate and complete information to the  
8 United States Probation Office. There are specific  
9 conditions in paragraph 25 regarding registration,  
10 notification that he has been made aware of, Your  
11 Honor.

12 He is waiving his appellate rights, saving and  
13 except for two reasons: One, the government makes  
14 material misrepresentations; or, two, I am ineffective.

15 The government is agreeing to not bring  
16 additional charges and is to move at sentencing to  
17 dismiss Counts 2 through 8 of the indictment.

18 This -- and, Your Honor, I explained the  
19 provision here, that this is limited, paragraph 29,  
20 only to the United States federal government. This  
21 does not apply to counts that were dismissed by the  
22 State of New Mexico.

23 I further have represented to my client,  
24 Mr. Alvarez, Your Honor, that normally the -- that does  
25 not mean that those will come back. But this agreement

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1 does not encompass those, and we are not able to  
2 prevent the United States -- or excuse me, prevent the  
3 State of New Mexico -- I get tongue-tied every so  
4 often -- from filing those charges. He is represented  
5 in those by other appointed counsel.

6 This is a voluntary plea, and any violation of  
7 this plea agreement, Your Honor, would have serious  
8 consequences, and the government could move forward on  
9 the other seven counts that were dismissed. And that  
10 is it, Your Honor.

11 THE COURT: All right. Mr. Alvarez, did  
12 that summary match up with your understanding of it?

13 DEFENDANT ALVAREZ: Yes, Your Honor.

14 THE COURT: All right. There's just a few  
15 things that I want to go over with you. As your  
16 attorney mentioned, you know, there's some stipulations  
17 in the plea agreement, and the big one for you is  
18 acceptance of responsibility.

19 What you have to understand about the  
20 stipulations in your agreement is these are only  
21 agreements you have with the prosecutor. They're not  
22 binding on your sentencing judge, which means it's  
23 possible you could go to your sentencing hearing and  
24 the judge could refuse to follow, you know, any of the  
25 stipulations in the plea agreement. And if that

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1 happened, you still would not be allowed to withdraw  
2 your guilty plea. Do you understand that?

3 DEFENDANT ALVAREZ: Yes, Your Honor.

4 THE COURT: All right. And, you know, your  
5 attorney also discussed the restitution matter. You  
6 know, the restitution orders, which is a monetary  
7 repayment that goes to victims, that can be a pretty,  
8 you know, big number, and that number has not been  
9 established yet in your case.

10 So if it's a number that you're not happy with,  
11 you would not be allowed to withdraw your guilty plea,  
12 and you would be -- you know, that restitution amount  
13 would still be due and payable. Do you understand  
14 that?

15 DEFENDANT ALVAREZ: Yes, Your Honor.

16 THE COURT: All right. And my next question  
17 actually is for the government. The forfeiture  
18 provision in this plea agreement, I just want to make  
19 sure that everybody is on the same page.

20 It's a very broad statement here of "any media  
21 and/or electronic devices or computer-related media  
22 that contains evidence or was an instrumentality of a  
23 violation."

24 Mr. Benjamin, when he was summarizing that, I  
25 think, made an assumption that I want to see if it's

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1 correct. Is the government seeking, under this  
2 provision, to forfeit any materials that have not been  
3 already seized?

4 MR. BARTLETT: I don't believe so, Your  
5 Honor.

6 THE COURT: So when you say "I don't believe  
7 so," I'm going to give you a chance to back up on that.  
8 I just want to make sure because I'm going to -- in my  
9 opinion, I think that we need to have a "yes" or "no"  
10 from the United States on that.

11 MR. BARTLETT: Understood, Your Honor. I  
12 don't know specifically the answer to that question.  
13 If I may be excused to call the attorney assigned to  
14 this case briefly to obtain an answer to that question.  
15 Would that be acceptable to the Court?

16 THE COURT: It would.

17 MR. BARTLETT: Okay. One moment, Your  
18 Honor. Thank you.

19 [Discussion off the record.]

20 THE COURT: So, Mr. Alvarez, while he's  
21 doing that, I want to talk to you about forfeiture in  
22 general. You know, when the government seeks to  
23 forfeit items, that tends to be -- that's a complete  
24 separate matter or -- you know, by that, I mean there  
25 are a bunch of due process rights you have in a

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1 forfeiture proceeding. You know, you have a right to  
2 notice, and you have a right to have a hearing to  
3 determine whether any given item is subject to  
4 forfeiture under the law.

5 What you're agreeing to in this plea  
6 agreement -- and we're kind of nailing down exactly  
7 what you're agreeing to it about -- but you're agreeing  
8 to give up all your due process rights as to the  
9 forfeiture of those items. Do you understand that?

10 DEFENDANT ALVAREZ: What does "forfeiture"  
11 mean?

12 THE COURT: Well, forfeiture basically means  
13 that property that was yours becomes the property of  
14 the United States government.

15 MR. BENJAMIN: Your Honor, if I may explain  
16 what I believe, and the Court [INAUDIBLE] assumption.

17 It's my understanding from talking to  
18 Mr. Alvarez and reviewing the discovery and talking to  
19 the assigned prosecutor that the two items that are  
20 going to be forfeited are the blue Motorola cell phone  
21 and a silver Samsung cell phone. Both of those were  
22 the instrumentalities that were used in the creation,  
23 and they're being dismissed, but the distribution of  
24 that.

25 And I understand the Court's concern. I quite

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1 frankly appreciate the Court's concern, but that is  
2 where I'm understanding, Your Honor.

3 THE COURT: All right.

4 MR. BENJAMIN: But thank you.

5 THE COURT: So, Mr. Alvarez, do you  
6 understand now what "forfeiture" means?

7 DEFENDANT ALVAREZ: That they're going to  
8 take out those items? They're not --

9 THE COURT: What it means is whatever items  
10 that are subject to forfeiture and what Mr. Benjamin  
11 talked about just now is the two cell phones that were  
12 used in the commission of the crime, those would then  
13 become the property of the United States government  
14 without any further action by them. Do you understand  
15 that?

16 DEFENDANT ALVAREZ: Yes. Yes, Your Honor.

17 THE COURT: All right. And I think we have  
18 Mr. Bartlett back.

19 MR. BARTLETT: Yes, Your Honor. So the  
20 government does not intend to seek forfeiture of any of  
21 the items described in paragraph 19A of the plea  
22 agreement that hasn't already been seized by the  
23 government.

24 THE COURT: All right. So, Mr. Alvarez, I  
25 just wanted to confirm that the language in the plea

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1 agreement was broader than I typically see and, in  
2 theory, could lead to forfeiture of items that you  
3 might not expect them to.

4 But basically what the government is going to be  
5 forfeiting in your case are the electronic devices that  
6 they've already seized from you. Do you understand  
7 that?

8 DEFENDANT ALVAREZ: That means they are  
9 taking them out or --

10 THE COURT: Well, it means that you'll never  
11 see them again. They'll become the property of the  
12 United States government from now and forever.

13 DEFENDANT ALVAREZ: That's fine, yes, sir.  
14 I understand.

15 MR. BENJAMIN: And do you remember we  
16 discussed them keeping them?

17 DEFENDANT ALVAREZ: Yes, I understand.

18 THE COURT: All right. And, Mr. Alvarez,  
19 the last thing I want to talk to you about -- almost  
20 the last thing -- is your attorney mentioned the waiver  
21 of appeal rights that's in your plea agreement.

22 Now, ordinarily if someone just comes in and  
23 pleads guilty to a charge they're facing, they actually  
24 keep the ability to appeal their conviction and maybe  
25 most importantly to appeal the sentence that's imposed

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1 upon them.

2           But if you plead guilty with this plea  
3 agreement, you're going to be giving up your appeal and  
4 in virtually all circumstances. There's only one real  
5 exception, and that is that you could argue down the  
6 road that your attorney gave you constitutionally  
7 ineffective assistance of counsel. But any other  
8 argument that you might want to raise, you would not be  
9 allowed to. Do you understand that?

10           DEFENDANT ALVAREZ: Yes, Your Honor.

11           THE COURT: Now, we've been talking and your  
12 attorney talked in terms of waiver of appeal rights,  
13 but in that -- and that's just because that's the title  
14 in the plea agreement.

15           But that paragraph also gives up another kind of  
16 related right, which is the right to certain  
17 post-conviction proceedings. Some people call it a  
18 2255. Some people call it habeas corpus. Some people  
19 call it a collateral attack. It all means the same  
20 thing, and that is ordinarily you would have the right,  
21 after your appeal is over, to come into court one more  
22 time and argue that there was something wrong,  
23 unlawful, about your conviction or your sentence.

24           But in giving up your right to appeal in that  
25 section, you're also giving up your right to do that

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1 collateral attack, with that same exception about  
2 ineffective assistance of counsel. Do you understand  
3 that?

4 DEFENDANT ALVAREZ: Yes, Your Honor.

5 THE COURT: Now, have you talked with your  
6 attorney about what he estimates your sentence will be  
7 if you plead guilty today?

8 DEFENDANT ALVAREZ: Yes, Your Honor.

9 THE COURT: That's good and appropriate you  
10 did that. That's important advice that you received  
11 from your attorney.

12 But you do have to understand that you'll be  
13 sentenced, of course, at the discretion of the district  
14 judge in your case, and that judge could give you a  
15 sentence that's harsher than whatever your lawyer has  
16 estimated for you. In fact, if it would be reasonable  
17 in your case, it could go up to the maximum the  
18 prosecutor told you about. Do you understand that?

19 DEFENDANT ALVAREZ: Yes, Your Honor.

20 THE COURT: All right. Then let me ask you:  
21 How do you plead to Count 1 of the indictment charging  
22 production of a visual depiction of a minor engaging in  
23 sexually explicit conduct? Guilty or not guilty?

24 DEFENDANT ALVAREZ: Guilty, Your Honor.

25 THE COURT: So at this time, I'm going to

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1 have the prosecutor tell you what he thinks the  
2 government could prove to establish that count to a  
3 jury if you went to trial.

4 Counsel?

5 MR. BARTLETT: The United States would  
6 establish beyond a reasonable doubt that prior to  
7 February 26th, 2020, this defendant began an  
8 inappropriate relationship with a 13-year-old minor.  
9 They began communicating over of the application  
10 Talkatone.

11 On or about February 26th, 2020, in Doña Ana  
12 County, in the District of New Mexico, this defendant  
13 asked the minor to send him pictures of her vagina.  
14 The minor, using a Motorola Moto eg cell phone then  
15 took several pictures of her bare vagina, which she  
16 sent to him. This defendant acknowledges that he  
17 persuaded the minor to take these pictures.

18 This defendant also acknowledges that the  
19 pictures constitute a sexually explicit conduct,  
20 specifically a lascivious display of the genitalia as  
21 defined by 18 USC 2256(2)(A)(v). This defendant also  
22 knows that the cell phone used to create the photos was  
23 manufactured in India. Thus the phone had to travel in  
24 foreign commerce to be present in the state of  
25 New Mexico.

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1 He also acknowledges that when he asked the  
2 minor to send him the picture, he anticipated she would  
3 do so through the Talkatone application, which requires  
4 both users to be connected to the Internet.

5 THE COURT: All right. Mr. Alvarez, are  
6 those facts true in your case?

7 DEFENDANT ALVAREZ: Yes, Your Honor.

8 THE COURT: Mr. Benjamin, are you satisfied  
9 that pleading guilty with this plea agreement is in  
10 your client's best interest?

11 MR. BENJAMIN: I am, Your Honor.

12 THE COURT: I find that Mr. Alvarez is  
13 competent and capable of entering an informed plea,  
14 that he's aware of the nature of the charge against him  
15 and the consequences of pleading guilty to it. I find  
16 his plea is knowing and voluntary and supported by  
17 sufficient facts.

18 I further find that the national and  
19 district-wide prerequisites to conducting a remote plea  
20 hearing under the CARES Act are met. I find the  
21 defendant has knowingly and voluntarily consented to a  
22 remote plea hearing. I further find that the plea in  
23 this case cannot be further delayed without serious  
24 harm to the interests of justice.

25 Specifically, I rely on the reasons laid out in

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1 the notice filed by the defendant, as well as the fact  
2 that this will expedite a sentencing hearing in his  
3 case, which will lead to a designation to BOP with  
4 positive programs that Mr. Alvarez can avail himself of  
5 that would not have otherwise been available as he is  
6 currently detained.

7 So I am going to find that a remote plea hearing  
8 is authorized under the CARES Act, and I will accept  
9 his plea of guilty and now adjudge him guilty to  
10 Count 1 of the indictment.

11 I will defer acceptance of the plea agreement to  
12 the district judge who will sentence him.

13 I will order a standard presentence report in  
14 this case.

15 Mr. Benjamin, anything else on his behalf?

16 MR. BENJAMIN: No, Your Honor.

17 THE COURT: All right, then. Mr. Alvarez,  
18 this concludes your plea hearing. You are excused.

19 DEFENDANT ALVAREZ: Thank you, Your Honor.

20 MR. BENJAMIN: May I be excused, Your Honor?

21 THE COURT: You may. Have a good day.

22 MR. BENJAMIN: Thank you, Your Honor.

23 MR. BARTLETT: Thank you, Your Honor.

24 [Court in recess.]

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1 REPORTER'S CERTIFICATE

2 I, Jenifer L. Russin, CCR #182, a Certified  
3 Court Reporter, do hereby certify that the proceedings  
4 of the above-entitled cause were reported by me  
5 stenographically and that the within transcript is a  
6 true and accurate transcription of my shorthand notes.

7 I FURTHER CERTIFY that I am neither an  
8 attorney nor counsel for, nor related to or employed by  
9 any of the parties to the action, and that I am not a  
10 relative or employee of any attorney or counsel  
11 employed by the parties hereto, or financially  
12 interested in the action.

13  
14  
15 

16 Jenifer L. Russin, CSR RDR CCR  
17 Certified Court Reporter #182  
18 License Expires: 12/31/2021  
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